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SENATE BILL 506

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO TAXATION; AMENDING THE RENEWABLE ENERGY PRODUCTION  
TAX CREDIT TO INCREASE THE CAP ON THE AMOUNT OF ELECTRICITY  
PRODUCTION ELIGIBLE FOR THE CREDIT AND PROVIDE A DIFFERENT RATE  
FOR CERTAIN ELECTRICITY PRODUCTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2A-19 NMSA 1978 (being Laws 2002,  
Chapter 59, Section 1, as amended) is amended to read:

"7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--  
LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

A. The tax credit provided in this section may be  
referred to as the "renewable energy production tax credit".  
The tax credit provided in this section may not be claimed with  
respect to the same electricity production for which the  
renewable energy production tax credit provided in the Income

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1 Tax Act has been claimed.

2 B. A person is eligible for the renewable energy  
3 production tax credit if the person:

4 (1) holds title to a qualified energy  
5 generator that first produced electricity on or before  
6 January 1, 2018; or

7 (2) leases property upon which a qualified  
8 energy generator operates from a county or municipality under  
9 authority of an industrial revenue bond and if the qualified  
10 energy generator first produced electricity on or before  
11 January 1, 2018.

12 C. The amount of the tax credit [~~shall equal one~~  
13 ~~cent (\$.01) per kilowatt-hour of the first four hundred~~  
14 ~~thousand megawatt-hours of]~~ for electricity produced by the  
15 qualified energy generator in the taxable year using a  
16 wind- or biomass-derived qualified energy resource shall be at  
17 the amounts specified in Paragraphs (1) and (2) of this  
18 subsection; provided that the total amount of tax credits  
19 claimed by all taxpayers for a single qualified energy  
20 generator in a taxable year using a wind- or biomass-derived  
21 qualified energy resource shall [~~not exceed one cent (\$.01) per~~  
22 ~~kilowatt-hour of]~~ be limited to the first four hundred thousand  
23 megawatt-hours of electricity produced by the qualified energy  
24 generator in the taxable year:

25 (1) one cent (\$.01) per kilowatt-hour that is

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1 included in the first two million megawatt-hours, of the four  
2 million megawatt-hour limit, certified by the energy, minerals  
3 and natural resources department pursuant to the provisions of  
4 Subsection G of this section; and

5 (2) one-half cent (\$.005) per kilowatt-hour  
6 that is included in the second two million megawatt-hours, of  
7 the four million megawatt-hour limit, certified by the energy,  
8 minerals and natural resources department pursuant to the  
9 provisions of Subsection G of this section.

10 D. The amount of the tax credit for electricity  
11 produced by a qualified energy generator in the taxable year  
12 using a solar-light-derived or solar-heat-derived qualified  
13 energy resource shall be at the amounts specified in Paragraphs  
14 (1) through (10) of this subsection; provided that the total  
15 amount of tax credits claimed for a taxable year by all  
16 taxpayers for a single qualified energy generator using a  
17 solar-light-derived or solar-heat-derived qualified energy  
18 resource shall be limited to the first two hundred thousand  
19 megawatt-hours of electricity produced by the qualified energy  
20 generator in the taxable year:

21 (1) one and one-half cents (\$.015) per  
22 kilowatt-hour in the first taxable year in which the qualified  
23 energy generator produces electricity using a solar-light-  
24 derived or solar-heat-derived qualified energy resource;

25 (2) two cents (\$.02) per kilowatt-hour in the

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1 second taxable year in which the qualified energy generator  
2 produces electricity using a solar-light-derived or solar-heat-  
3 derived qualified energy resource;

4 (3) two and one-half cents (\$.025) per  
5 kilowatt-hour in the third taxable year in which the qualified  
6 energy generator produces electricity using a solar-light-  
7 derived or solar-heat-derived qualified energy resource;

8 (4) three cents (\$.03) per kilowatt-hour in  
9 the fourth taxable year in which the qualified energy generator  
10 produces electricity using a solar-light-derived or solar-heat-  
11 derived qualified energy resource;

12 (5) three and one-half cents (\$.035) per  
13 kilowatt-hour in the fifth taxable year in which the qualified  
14 energy generator produces electricity using a solar-light-  
15 derived or solar-heat-derived qualified energy resource;

16 (6) four cents (\$.04) per kilowatt-hour in the  
17 sixth taxable year in which the qualified energy generator  
18 produces electricity using a solar-light-derived or solar-heat-  
19 derived qualified energy resource;

20 (7) three and one-half cents (\$.035) per  
21 kilowatt-hour in the seventh taxable year in which the  
22 qualified energy generator produces electricity using a  
23 solar-light-derived or solar-heat-derived qualified energy  
24 resource;

25 (8) three cents (\$.03) per kilowatt-hour in

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1 the eighth taxable year in which the qualified energy generator  
2 produces electricity using a solar-light-derived or solar-heat-  
3 derived qualified energy resource;

4 (9) two and one-half cents (\$.025) per  
5 kilowatt-hour in the ninth taxable year in which the qualified  
6 energy generator produces electricity using a solar-light-  
7 derived or solar-heat-derived qualified energy resource; and

8 (10) two cents (\$.02) per kilowatt-hour in the  
9 tenth taxable year in which the qualified energy generator  
10 produces electricity using a solar-light-derived or solar-heat-  
11 derived qualified energy resource.

12 E. A taxpayer eligible for a renewable energy  
13 production tax credit pursuant to Subsection B of this section  
14 shall be eligible for the renewable energy production tax  
15 credit for ten consecutive years, beginning on the date the  
16 qualified energy generator begins producing electricity.

17 F. As used in this section:

18 (1) "biomass" means organic material that is  
19 available on a renewable or recurring basis, including:

20 (a) forest-related materials, including  
21 mill residues, logging residues, forest thinnings, slash,  
22 brush, low-commercial value materials or undesirable species,  
23 salt cedar and other phreatophyte or woody vegetation removed  
24 from river basins or watersheds and woody material harvested  
25 for the purpose of forest fire fuel reduction or forest health

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1 and watershed improvement;

2 (b) agricultural-related materials,  
3 including orchard trees, vineyard, grain or crop residues,  
4 including straws and stover, aquatic plants and agricultural  
5 processed co-products and waste products, including fats, oils,  
6 greases, whey and lactose;

7 (c) animal waste, including manure and  
8 slaughterhouse and other processing waste;

9 (d) solid woody waste materials,  
10 including landscape or right-of-way tree trimmings, rangeland  
11 maintenance residues, waste pallets, crates and manufacturing,  
12 construction and demolition wood wastes, excluding pressure-  
13 treated, chemically treated or painted wood wastes and wood  
14 contaminated with plastic;

15 (e) crops and trees planted for the  
16 purpose of being used to produce energy;

17 (f) landfill gas, wastewater treatment  
18 gas and biosolids, including organic waste byproducts generated  
19 during the wastewater treatment process; and

20 (g) segregated municipal solid waste,  
21 excluding tires and medical and hazardous waste;

22 (2) "qualified energy generator" means a  
23 facility with at least one megawatt generating capacity located  
24 in New Mexico that produces electricity using a qualified  
25 energy resource and that sells that electricity to an unrelated

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1 person; and

2 (3) "qualified energy resource" means a  
3 resource that generates electrical energy by means of a  
4 fluidized bed technology or similar low-emissions technology or  
5 a zero-emissions generation technology that has substantial  
6 long-term production potential and that uses only the following  
7 energy sources:

8 (a) solar light;

9 (b) solar heat;

10 (c) wind; or

11 (d) biomass.

12 G. A person that holds title to a facility  
13 generating electricity from a qualified energy resource or a  
14 person that leases such a facility from a county or  
15 municipality pursuant to an industrial revenue bond may request  
16 certification of eligibility for the renewable energy  
17 production tax credit from the energy, minerals and natural  
18 resources department, which shall determine if the facility is  
19 a qualified energy generator. The energy, minerals and natural  
20 resources department may certify the eligibility of an energy  
21 generator only if the total amount of electricity that may be  
22 produced annually by all qualified energy generators that are  
23 certified pursuant to this section and pursuant to the Income  
24 Tax Act will not exceed a total of [~~two~~] four million megawatt-  
25 hours plus an additional five hundred thousand megawatt-hours

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1 produced by qualified energy generators using a solar-light-  
2 derived or solar-heat-derived qualified energy resource.  
3 Applications shall be considered in the order received. The  
4 energy, minerals and natural resources department may estimate  
5 the annual power-generating potential of a generating facility  
6 for the purposes of this section. The energy, minerals and  
7 natural resources department shall issue a certificate to the  
8 applicant stating whether the facility is an eligible qualified  
9 energy generator and the estimated annual production potential  
10 of the generating facility, which shall be the limit of that  
11 facility's energy production eligible for the tax credit for  
12 the taxable year. The energy, minerals and natural resources  
13 department may issue rules governing the procedure for  
14 administering the provisions of this subsection and shall  
15 report annually to the appropriate interim legislative  
16 committee information that will allow the legislative committee  
17 to analyze the effectiveness of the renewable energy production  
18 tax credit, including the identity of qualified energy  
19 generators, the energy production means used, the amount of  
20 energy produced by those qualified energy generators and  
21 whether any applications could not be approved due to program  
22 limits.

23 H. A taxpayer may be allocated all or a portion of  
24 the right to claim a renewable energy production tax credit  
25 without regard to proportional ownership interest if:

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1 (1) the taxpayer owns an interest in a  
2 business entity that is taxed for federal income tax purposes  
3 as a partnership;

4 (2) the business entity:

5 (a) would qualify for the renewable  
6 energy production tax credit pursuant to Paragraph (1) or (2)  
7 of Subsection B of this section;

8 (b) owns an interest in a business  
9 entity that is also taxed for federal income tax purposes as a  
10 partnership and that would qualify for the renewable energy  
11 production tax credit pursuant to Paragraph (1) or (2) of  
12 Subsection B of this section; or

13 (c) owns, through one or more  
14 intermediate business entities that are each taxed for federal  
15 income tax purposes as a partnership, an interest in the  
16 business entity described in Subparagraph (b) of this  
17 paragraph;

18 (3) the taxpayer and all other taxpayers  
19 allocated a right to claim the renewable energy production tax  
20 credit pursuant to this subsection own collectively at least a  
21 five percent interest in a qualified energy generator;

22 (4) the business entity provides notice of the  
23 allocation and the taxpayer's interest to the energy, minerals  
24 and natural resources department on forms prescribed by that  
25 department; and

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1 (5) the energy, minerals and natural resources  
2 department certifies the allocation in writing to the taxpayer.

3 I. Upon receipt of notice of an allocation of the  
4 right to claim all or a portion of the renewable energy  
5 production tax credit, the energy, minerals and natural  
6 resources department shall promptly certify the allocation in  
7 writing to the recipient of the allocation.

8 J. A taxpayer may claim the renewable energy  
9 production tax credit by submitting to the taxation and revenue  
10 department the certificate issued by the energy, minerals and  
11 natural resources department, pursuant to Subsection G or H of  
12 this section, documentation showing the taxpayer's interest in  
13 the facility, documentation of the amount of electricity  
14 produced by the facility in the taxable year and any other  
15 information the taxation and revenue department may require to  
16 determine the amount of the tax credit due the taxpayer.

17 K. If the requirements of this section have been  
18 complied with, the department shall approve the renewable  
19 energy production tax credit. The credit may be deducted from  
20 a taxpayer's New Mexico corporate income tax liability for the  
21 taxable year for which the credit is claimed. If the amount of  
22 tax credit exceeds the taxpayer's corporate income tax  
23 liability for the taxable year:

24 (1) the excess may be carried forward for a  
25 period of five taxable years; or

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1 (2) if the tax credit was issued with respect  
2 to a qualified energy generator that first produced electricity  
3 using a qualified energy resource on or after October 1, 2007,  
4 the excess shall be refunded to the taxpayer.

5 L. Once a taxpayer has been granted a renewable  
6 energy production tax credit for a given facility, that  
7 taxpayer shall be allowed to retain the facility's original  
8 date of application for tax credits for that facility until  
9 either the facility goes out of production for more than six  
10 consecutive months in a year or until the facility's ten-year  
11 eligibility has expired."

12 Section 2. EFFECTIVE DATE.--The effective date of the  
13 provisions of this act is July 1, 2008.